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13 **BEFORE THE**

14 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

15 HEARING IN THE MATTER OF
16 CALIFORNIA DEPARTMENT OF WATER
17 RESOURCES AND UNITED STATES
18 BUREAU OF RECLAMATION
19 REQUEST FOR A CHANGE IN POINT OF
20 DIVERSION FOR CALIFORNIA WATER FIX

21 **LAND ET AL.'S AND**
22 **SAN JOAQUIN COUNTY ET AL.'S**
23 **OPPOSITION TO DWR'S MOTION FOR**
24 **RECONSIDERATION OF THE SCOPE OF**
25 **PHASE 2**

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1 Protestants Local Agencies of the North Delta and Friends of Stone Lakes National
2 Wildlife Refuge, Protestants County of San Joaquin, San Joaquin County Flood Control and
3 Water Conservation District, and Mokelumne River Water and Power Authority, and
4 Protestants Central Delta Water Agency and South Delta Water Agency (collectively,
5 “Protestants”) hereby join in the “Opposition to DWR’s Motion for Reconsideration of the Scope
6 of Phase 2” filed on March 28, 2018 by Natural Resources Defense Council, The Bay Institute,
7 and Defenders of Wildlife (“NRDC et al.”). Protestants incorporate by reference NRDC et al.’s
8 Opposition and all documents and evidence filed in support thereof.

9 DWR’s Motion for Reconsideration amounts to an argument that in ruling on what is
10 probably the most significant Petition for Change in California history, and in weighing the
11 momentous consequences of that petition for public trust resources and the public trust, this
12 Board is required to proceed with “blindness” on. Although DWR has repeatedly assured the
13 Board that the project would maintain “*existing*” levels of “reasonable protection” (see NRDC et
14 al. Opposition, p. 6, lines 3–10), DWR insists that examination of whether “*existing*” regulatory
15 requirements applicable to the Delta really are protective of the public trust and public interest
16 is outside the scope of this Hearing. Nor, says DWR, may the Board consider the proposed
17 project’s contribution to the cumulative negative impacts that have brought the Delta to its
18 *existing* state. Rather, DWR insists that the Board must focus solely on the proposed project’s
19 “incremental” effects. And by “incremental” effects, DWR means only its “*modeled*”
20 incremental effects (comparing the CWF H3+ model against the No Action Alternative
21 scenario), without consideration of what protestants believe are the “real” effects of the twin
22 tunnel scheme and the obvious failures of the *existing* regulatory regime to protect the public
23 trust, including Delta fisheries. Indeed, application of DWR’s myopic “blindness on” approach
24 could render any examination of the failures of the SWP and CVP and the *existing* regulations
25 to protect public interest and public trust resources irrelevant. No law, practice, precedent, or
26 prior order of this Board requires such an absurd result.

27 DWR’s position is fraught with ironies that go well beyond the scope of this Joinder. It
28 should be remembered, though, that the genesis of the “twin tunnels” proposal was the project

1 proponents' sounding the alarm about the inadequacy of *existing* conditions in the Delta, both
2 with respect to protection of fisheries and with respect to matters they deemed to be in the
3 "public interest." Now, DWR insists that the existing conditions in the Delta, including what
4 many argue are regulatory failures that form the background for those existing conditions, are
5 not to be considered. DWR is also incorrect that protestants must compare the effects of the
6 Petition against the No Action Alternative as defined by DWR in its environmental documents.
7 (DWR Motion, p. 4.) No ruling by the Hearing officers dictates what information protestants
8 may rely upon to illustrate how the Petition fails to carry its various burdens with respect to Part
9 1 and 2 Hearing issues. As has been explained in the course of the Hearing, existing
10 conditions are also an important comparison point and should not be ignored. (See, e.g.,
11 Antioch-200, p. 4; Antioch-202 Errata, p. 20; Antioch 300, pp. 14-15.)

12 For the reasons set forth above, and in NRDC et. al.'s Opposition, DWR's motion
13 should be denied.

14 Respectfully submitted,

15 Dated: April 4, 2018

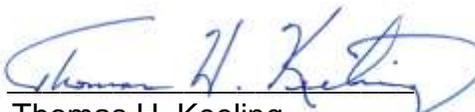
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16
17 By: 

Osha R. Meserve
Attorneys for Protestants
Local Agencies of the North Delta,
and Friends of Stone Lakes National Wildlife
Refuge

22 Dated: April 4, 2018

FREEMAN FIRM,

23
24 By: 

Thomas H. Keeling
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San Joaquin County Flood Control and Water
Conservation District, and
Mokelumne River Water and Power Authority

1 Dated: April 4, 2018

MOHAN, HARRIS, RUIZ, WORTMANN,
PERISHO & RUBINO LP

3 By: /s/ *Dean Ruiz*

4 S. Dean Ruiz
5 Attorneys for Protestants
6 South Delta Water Agency, Central Delta Water
7 Agency, Lafayette Ranch, Heritage Lands,
8 Mark Bachetti Farms, and Rudy Mussi
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1 **STATEMENT OF SERVICE**

2 I hereby certify that I have this day, April 4, 2018, submitted to the State Water
3 Resources Control Board and caused a true and correct copy of the following document:

4 **LAND ET AL.'S AND SAN JOAQUIN COUNTY ET AL.'S**
5 **OPPOSITION TO DWR'S MOTION FOR RECONSIDERATION OF**
6 **THE SCOPE OF PHASE 2**

7 to be served **by Electronic Mail** (email) upon the parties listed in Table 1 of the **Current**
8 **Service List** for the California WaterFix Petition Hearing, dated March 26, 2018, posted by the
9 State Water Resources Control Board at
10 [https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_water](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_water_fix/service_list.shtml)
11 [fix/service_list.shtml](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_water_fix/service_list.shtml)

12 I certify that the foregoing is true and correct and that this document was executed on
13 April 4, 2018.

14 Signature:  _____

15 Name: Mae Ryan Empleo

16 Title: Legal Assistant for Osha R. Meserve
17 Soluri Meserve, A Law Corporation

18 Party/Affiliation:

19 Local Agencies of the North Delta, and
20 Friends of Stone Lakes National Wildlife Refuge

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